



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, MNDCL, FFL

### Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$5,300.00 for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee for their application, pursuant to section 72.

The two applicants, applicant MG ("applicant") and "applicant JR," and the respondent attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 38 minutes from 1:30 p.m. to 2:08 p.m.

All hearing participants confirmed their names and spelling. The applicant and the respondent provided their email addresses for me to send this decision to both parties after the hearing.

Applicant JR confirmed that the applicant had permission to represent him at this hearing. The applicant identified himself as the primary speaker for the applicants and said that he would assist applicant JR with English language translation. He confirmed that he was only an agent for applicant JR because he did not speak much English. He stated that applicant JR owns the property and provided the property address that is the subject of this application.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this

hearing, the respondent affirmed, under oath, that he would not record this hearing. At the outset of this hearing, the applicant affirmed, under oath, that neither he, nor applicant JR, would record this hearing.

I explained the hearing and settlement processes to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application. Neither party made any adjournment or accommodation requests. I provided the applicant additional and ample time throughout this hearing to translate and explain information to applicant JR.

The respondent confirmed receipt of the applicants' application for dispute resolution and notice of hearing. In accordance with section 89 of the *Act*, I find that the respondent was duly served with the applicants' application and notice of hearing.

The applicant confirmed that the applicants did not provide any evidence for this hearing. The respondent confirmed that he did not provide any evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the applicants' application to correct the spelling of applicant JR's surname and the respondent's full name. Both parties consented to these amendments during this hearing. I find no prejudice to either party in making these amendments.

### Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, to decide this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim and my findings are set out below.

The issue of jurisdiction was raised in the respondent's submissions, at the outset of this hearing.

Both parties agreed to the following facts. No written tenancy agreement was signed by both parties. The respondent did not pay any rent, security or pet damage deposits to applicant JR. There was no written documentation for the respondent to live at applicant JR's property or to pay any rent to applicant JR.

The respondent stated the following facts. He did not move into or reside at applicant JR's property. He does not owe any money for rent or otherwise to applicant JR. Him and applicant JR used to be friends and help each other. He and applicant JR only worked together in the "bush." He never signed any rental agreement with applicant JR.

Applicant JR stated the following facts. The respondent never paid any rent to applicant JR to live at his trailer. The respondent caused him "lots of trouble" and owes him "lots of money" for rent. He loaned money to the respondent for a business, but he did not receive it back, so he will be pursuing the respondent in Court for that money.

### Analysis

The following sections of the *Act* state, in part:

#### *Definitions*

##### *1 In this Act:*

*"landlord", in relation to a rental unit, includes any of the following:*

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
  - (i) permits occupation of the rental unit under a tenancy agreement,*
  - or*
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
  - (i) is entitled to possession of the rental unit, and*
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

*"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to*

*possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:*

- (a) a security deposit;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

*"rental unit" means living accommodation rented or intended to be rented to a tenant;*

*"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;*

*"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

*What this Act does not apply to*

*4 This Act does not apply to*

- (d) living accommodation included with premises that*
  - (i) are primarily occupied for business purposes, and*
  - (ii) are rented under a single agreement,*

*Enforcing rights and obligations of landlords and tenants*

*6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

*(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...*

*Requirements for tenancy agreements*

*13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.*

*(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:*

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*

- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
  - (i) the date on which the tenancy starts;*
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
  - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
  - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
  - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
  - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
  - (vi) which services and facilities are included in the rent;*
  - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

I find that the RTB does not have jurisdiction to decide the applicants' application, since it is not a residential tenancy matter, pursuant to the *Act*. On a balance of probabilities, I find that the applicants failed to provide sufficient testimonial or documentary evidence, to show that a tenancy existed, pursuant to a tenancy agreement, between a landlord and a tenant, pursuant to the *Act*.

Both parties provided undisputed, affirmed testimony and evidence at this hearing. Both parties agreed that they did not sign or provide any written documentation, including a tenancy agreement, to indicate that this was a tenancy, the parties to the tenancy, the address of the rental unit, the amount of rent payable, the amount of security or pet damage deposits payable, the length of the tenancy, which services or facilities were included in rent, or other such relevant information, as required by section 13 of the *Act*. The applicant even testified that he told applicant JR to sign and provide a written tenancy agreement for this tenancy and follow the law, but applicant JR failed to do so.

Both parties referenced a commercial business relationship in their testimony. Applicant JR stated that he loaned money to the respondent for business. The respondent stated that he worked with applicant JR. The RTB only determines residential tenancy disputes. Section 4(d) of the *Act* excludes living accommodation that are primarily occupied for business purposes under a single agreement.

For the above reasons, I decline to exercise jurisdiction over the applicants' application. I find that the applicants' application is not a residential tenancy dispute, that can be determined by the RTB, pursuant to the *Act*. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

### Conclusion

I decline to exercise jurisdiction over the applicants' application.

I make no determination on the merits of the applicants' application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 06, 2022

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Residential Tenancy Branch